Ukraine Continues Development of Securities Regulations: New Rules for Issuers and Investors

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On June 11, 2009 Ukraine's parliament adopted the Law of Ukraine "On Amendment of the Law of Ukraine 'On Securities and Stock Market' With Respect to Some Rules Applicable to Issuers and Investors" (the Securities Amendment), which went into effect on October 30, 2009.

The Securities Amendment was adopted mainly to bring the "On Securities and Stock Market" law in compliance with the Joint Stock Company Law (2008). In addition, the Securities Amendment introduces important rules applicable to issuers and investors in Ukraine's securities market. The Securities Amendment (i) limits the number of potential investors who may be solicited during private placements of joint stock company (JSC) shares, (ii) introduces grounds for termination of a shares subscription and (iii) establishes a requirement to convert shares into either paper or electronic form by October 30, 2010.

Maximum Number of Potential Investors During Private Placements

The Securities Amendment limits the number of potential investors who may be directly solicited to buy shares during private placement of a private JSC to 100 persons, who must be determined in advance. In addition to 100 new persons, all existing shareholders may be solicited during the private placement of a public JSC's shares.

Termination of Shares Subscription; Consequences and Penalties

The Securities Amendment introduces the following grounds for termination of a shares subscription:

- The Ukraine Securities and Stock Market State Commission (SSMSC) invalidates the issuance of shares;
- The JSC does not approve the results of the shares placement within 60 days after its completion; or
- Shareholders do not amend the JSC's statutes to reflect the increase of the JSC's charter capital. Ukraine law does not establish any deadline for when a company must amend its statutes. Therefore, termination of a shares subscription on this ground is not likely until the deadline is established by law or the SSMSC.

The Securities Amendment further provides that, no later than six months after any of these events occur, the JSC must return to shares subscribers the money, property or proprietary rights they paid as a subscription fee. In turn, subscribers must return to the JSC any share certificates they received.

If the JSC or subscriber breaches these obligations, they will be subject to a penalty equal to double the discount rate of the National Bank of Ukraine (currently, 10.25 percent per annum). However, this penalty provision is quite general and the procedure for its application needs to be further clarified by the SSMSC.

Electronic Shares

The Securities Amendment requires all JSCs with both paper and electronic shares to convert them to one form by October 30, 2010. In addition, the Securities Amendment restates the Joint Stock Company Law provision that, starting from October 29, 2010 (i.e., one day earlier than the previous deadline), all shares must be only electronic.

From a practical point of view, the almost simultaneous deadlines mean that before October 29, 2010 all shares must be converted into electronic format. Conversion from electronic to paper format would be unreasonable (unless there were a strong need to do this) because by October 29, 2010 all shares would have to be converted back to electronic.

Conversion of shares from paper to electronic format is quite complex and protracted, taking approximately two to three months. To meet the October 29, 2010 deadline, a JSC should start the share conversion process no later than June 2010. Due to the SSMSC's exacting approach, all documents required for conversion should be carefully drafted and all deadlines should be met. Otherwise, the SSMSC may delay conversion of shares and a JSC may be subject to administrative penalties for violation of the securities regulations.

To convert shares from paper into electronic format, the following steps must be taken:

1. The General Shareholders Meeting decides to convert shares from paper to electronic.
2. No later than 10 days after the conversion decision date, the JSC publishes an announcement about the decision in one of the SSMSC's official publications and informs all shareholders who own shares subject to conversion.
3. The JSC applies to the SSMSC and, no later than 30 days after the conversion decision date, changes the certificate of registration of paper shares to a certificate of registration of electronic shares.
4. The JSC determines the date when the shareholder register will be terminated.
5. No later than 10 days before the shareholder register termination date, the JSC concludes (i) an

agreement with a licensed depositary for servicing the issuance of electronic shares and (ii) an agreement with a licensed custodian for opening securities accounts for owners of shares subject to conversion.

6. On the shareholder register termination date, the shareholder register is transferred to the custodian.

7. The JSC prepares a global certificate of shares subject to conversion and deposits it with the depositary, which then generates the electronic shares.

8. After the electronic shares are generated, the JSC instructs the depositary to transfer the shares to accounts of the JSC and the custodian and instructs the custodian to credit shares to the shareholders' securities accounts.

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by nonresidents to Ukraine-based residents for longer than one year. Limits were lifted for loans in non-Ukraine currency of the first group of the NBU Classifier of Foreign Currencies, which, *inter alia,* includes US dollars, euros, British pounds, Japanese yen and other convertible currencies that are traded on the major global financial markets (First Group of Foreign Currencies). In September 2008, the NBU decided to apply the interest rate limits only to short-term foreign loans — i.e., loans that did not exceed one year. The new maximum interest rate for short-term loans was established at 11 percent per annum for both fixed and floating interest rates.

By cancelling the maximum interest rate limits, the NBU responded to the rising cost of borrowing on international financial markets as well as the lack of sufficient credit resources resulting from the global financial crisis. However, starting on November 15, 2009 the old limits that were in force before October 27, 2008 will be valid again. In particular, for loans in the First Group of Foreign Currencies the following maximum interest rates will apply:

For fixed interest rates:

- 9.8 percent per annum if the term is less than one year;
- 10 percent per annum if the term is from one to three years; and
- 11 percent per annum if the term exceeds three years.

For floating interest rates the maximum is the London Interbank Offered Rate (for three-month deposits in US$) plus 750 basis points.

For loans in other currencies (the second and third groups under the NBU Classifier of Foreign Currencies) the maximum rate is 20 percent per annum. The second group of foreign currencies includes, *inter alia,* Russian rubles, Polish zlotys, Turkish liras and other currencies that, though convertible, are not widely used in international transactions and are not traded on the major global financial markets. The third group of foreign currencies includes, *inter alia,* Egyptian pounds, New Taiwan dollars and other currencies that are not convertible on the international financial markets.

Loan Agreements Registered Before the Return of Interest Rate Limits

Loan agreements registered with the NBU before November 15, 2009 will enjoy the flexible rules on interest rates established by NBU Regulation 294. However, if the parties introduce changes to the loan agreement and such changes have to be registered with the NBU (e.g., a change in the amount of the loan) after November 15, 2009, the parties must adjust the interest rate to the maximum rate established by the NBU. Otherwise, the NBU will not register changes to the loan agreement.

The maximum interest rate adjustment rule does not apply to the following changes to a loan agreement: (i) change in the name, address or banking details of the Ukraine-based borrower or foreign lender; and (ii) assignment of debt to a nonresident.

Important Considerations When Extending a Foreign Loan

NBU Registration of Foreign Loans

Loan agreements in foreign currency executed between residents of Ukraine and nonresidents must be registered by the NBU. Subject to certain exceptions, such loan agreements go into effect after their registration with the NBU.

Registration of the loan agreement is evidenced by a registration certificate issued by the respective NBU territorial department. A registration certificate is valid for the entire term of the loan agreement, provided that the resident borrower receives the loan or a portion of the loan within 180 days from the date the registration certificate is issued.

Resident borrowers must have the loan agreements registered before they can receive loan funds. If registration is not performed, the Ukraine-based borrower will be

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